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Supreme Court, U.S.
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No. 97-1523

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

RONALD MATTEI, Individually and as Executor of the Estate of Louis J. Mattei and
MARY LAURA MATTEI, - - - - *Petitioners,*

versus

MARIA MATTEI, - - - - - - *Respondent.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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68 pp

QUESTION PRESENTED

May a surviving spouse who is the beneficiary (under 29 U.S.C. § 1055, § 205 of ERISA) of her husband's death benefits in an employee pension benefit plan maintain an action against her husband's estate pursuant to 29 U.S.C. § 1140 (§ 510 of ERISA) where the estate, an unsuccessful rival claimant to the pension benefits, has discontinued a weekly stipend payable to the surviving spouse under an antenuptial agreement in retaliation for, or as an offset against, the surviving spouse's retention of the pension benefits?

LIST OF PARTIES

Parties before this Court

Ronald Mattei, Individually and as Executor of the Estate of Louis J. Mattei, and Mary Laura Mattei, Petitioners
Maria Mattei, Respondent

Parties to the Proceeding Below

(United States Court of Appeals for the Sixth Circuit No. 96-5443)
Maria Mattei, Appellant
Ronald Mattei, Individually and as Executor of the Estate of Louis J. Mattei, and Mary Laura Mattei, Appellees

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

See Petition at p. 1.

JURISDICTION

See Petition at pp. 1-2.

STATUTES OR OTHER PROVISIONS INVOLVED

In addition to § 510 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1140, cited by Petitioner, this case involves the scope and proper application of the following statutes and regulations, the pertinent text of which is set forth in Appendix A hereto:

(1) 29 U.S.C. § 1055 (ERISA § 205);

(2) § 401(a)(11), Internal Revenue Code of 1986, as amended ("Code");

(3) § 417 of the Code;

(4) Treasury Regulations § 1.401(a)-20, Q&A 28 (26 C.F.R. § 1.401(a)-20, Q&A 28);

(5) 29 U.S.C. § 1132(a)(1)(B) and (a)(3) (§§ 502(a)(1)(B) and (a)(3) of ERISA); and

(6) 29 U.S.C. § 1144(a) (§ 514(a) of ERISA).

STATEMENT OF THE CASE

Pursuant to Rule 15.2 of this Court, the Respondent, Maria Mattei, must point out a number of misstatements in, and omissions from, Petitioner's Statement of the Case (Petition at 2-5).

First, as to the law, this dispute is not just a "family law estate dispute" (Petition at 3) — ERISA-protected pension benefits were, and are, at the heart of it. The controversy centers upon, and grows out of, the response by the Estate of Louis J. Mattei, Sr. ("Estate") to the distribution by Equifax, Inc. ("Equifax"), of the death benefits of Louis J. Mattei, Sr. ("Mr. Mattei") to his surviving spouse, Maria Mattei, under the Equifax, Inc. Thrift Plan ("Thrift Plan"). The Thrift Plan is an employee pension benefit plan described in ERISA § 3(2), 29 U.S.C. § 1002(2).

The Estate's response to Maria's receipt of the Thrift Plan benefits was to stop paying Maria Mattei the $300 per week, indexed annually at 6% (the "Stipend"), Mr. Mattei had promised that his Estate would pay to Maria after his death for her life or until she remarried. This promise was set forth in Mr. Mattei's December 7, 1990 pre-marriage contract (the "Antenuptial Agreement") with Maria. Petitioners acknowledge this Antenuptial Agreement promise and the Estate's stoppage of payments (Petition at 3) but stop short of saying *why* the Estate stopped paying Maria the Stipend. Maria alleges, and the courts

below assumed for purposes of Petitioners' Fed.R.Civ.P. 12(b) (6) motion to dismiss, that the Estate stopped the payments in retaliation for Maria's receipt and retention of the ERISA pension benefits.

Second, Petitioners set out "material facts" (Petition at 2-5) outside the limitations inherent in the district court's dismissal of the complaint under Fed.R.Civ.P. 12(b)(6). The Sixth Circuit's reversal of the district court and reinstatement of the complaint places the case before this Court in the stance of an interlocutory appeal prior to any discovery. The only "facts" are in the complaint, and the central limitation of the Fed.R.Civ.P. 12(b)(6) dismissal in the district court is that the allegations of the complaint are required to be taken as true. Since certain of Petitioners' stated "material facts" evade this precept, a copy of the complaint is attached for the convenience of the Court as Appendix B, and a copy of the Antenuptial Agreement, which was not filed with the complaint, is attached for the Court's convenience as Appendix C.

Maria clearly alleges in the complaint that the Estate's motive for stopping the Stipend was retaliation for her retention of the Thrift Plan benefits. (Complaint, Appendix B, ¶¶ 12, 14-15, 19, 21). Petitioners, stating that Maria "had already received the entire death benefit" and "that the weekly payments were ceased almost two years after she received that benefit," suggest the two events were distant in time and unconnected. (Petition at 3-4).[1]

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1 The situation presented by Petitioners' "material facts" presentation is captured neatly in another ERISA § 510 case, *Inter-Modal Rail Employees Ass'n.* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 80 F.3d 348, 351 (9th Cir. 1996), *rev'd on other grounds*, ___ U. S. ___, 117 S. Ct. 1513, 137 L.Ed.2d 763 (1997) as follows:

> Defendants countered that an incidental or consequential loss of future, unaccrued pension benefits is not actionable, but, *as plaintiffs correctly note, questions of motivation and intent are not to be resolved at the pleading stage.* [Emphasis added.]

Petitioners suggest to this Court that the facts, and the motivations and intentions of the parties, are, or ultimately would be shown to be, other than as the district court was required to assume from the complaint under Fed.R. Civ.P. 12(b)(6). An example is Petitioners' wildly inaccurate assertion that "[n]o provision was made for Maria to receive any benefits under the [Thrift] Plan." (Petition at 3). In light of the surviving spouse protections under 29 U.S.C. § 1055 (ERISA § 205) that must be a part of every employee pension benefit plan, no separate "provision" needed to be made. Worse, Petitioners incorrectly state that "Maria does not allege that the Executor [of the Estate] ever asked her to surrender her rights to the Plan benefits" (Petition at 4), although such an act need not be shown where Maria generally has alleged the Estate's retaliation for her acceptance of ERISA benefits.

Whether or not such an allegation appears in the complaint, Maria will be able to demonstrate, through admissible documentary evidence in the district court, that the Estate *did* ask her "to surrender her rights to the Plan benefits." These documents will show the long and strenuous efforts of the Estate, both before and during that period of "almost two years," to obtain the Thrift Plan death benefits, first from Equifax and then from Maria.

A. The Estate's Claims Against Equifax

Beginning in early 1992, the Estate submitted to Equifax a written claim that the Estate was Mr. Mattei's proper beneficiary under the Thrift Plan. (Letter, Estate by Counsel to Equifax, 2/17/92, Appendix D hereto). Equifax denied this claim, citing, *inter alia*, the surviving spouse benefit provisions of 29 U.S.C. §1055 (ERISA §205) and §417 of the Code. (Letter, Equifax to Estate's Counsel, 3/6/92, Appendix E hereto). Rebuffed but undeterred, the Estate again wrote Equifax in August 1992, after the Thrift Plan's 60-day period for an administrative appeal had ex-

pired, demanding an accounting of Mr. Mattei's pension benefits and threatening to sue Equifax if the Estate's demand was not met. (Letter, Estate by Counsel to Equifax, 8/5/92, Appendix F hereto). The Plan reiterated the reasons for the claim denial under 29 U.S.C. §1055 and added a discussion of the Estate's failure to exhaust administrative remedies under 29 U.S.C. §1133 (ERISA §503). (Letter, Equifax to Estate's Counsel, 8/19/92, Appendix G hereto).

The Estate then turned to Kentucky's courts, and in January 1993 filed an action in Jefferson Circuit Court against Equifax seeking certain accrued but unpaid salary and vacation pay of Mr. Mattei, but also demanding an accounting of Mr. Mattei's benefits in the Equifax Thrift Plan. (Civil Summons and Complaint, *Estate of Louis J. Mattei, Sr.* v. *Equifax, Inc.*, Commonwealth of Kentucky, Jefferson Circuit Court, No. 93-CI-147, Appendix H hereto). In April 1993, the Estate and Equifax settled that lawsuit as to the salary and vacation pay, but the Estate's release of claims "specifically exclud[ed] any claim which could have been asserted against Equifax under the Plan." (Release and Settlement Agreement, Estate and Equifax, 4/28/93, Appendix I hereto). The Estate has never renounced or relinquished its claim of entitlement to Mr. Mattei's Thrift Plan benefits.

B. The Estate's Requests for Maria to Surrender Her Rights to the Plan Benefits

The Estate's efforts to get Maria to turn the Thrift Plan benefits over to the Estate can be shown to have been just as long-standing and persistent. During 1992, there were handwritten notes from Ronald Mattei, the Estate's executor, to Maria, inquiring whether Maria had "signed the papers that Equifax needed to forward the Thrift Plan to the Estate...." (Note, Ron Mattei to "Marie" Mattei, rec'd 8/19/92, Appendix J hereto). In February 1993, Maria obtained the Thrift Plan benefits of Mr. Mattei. The Es-

tate continued to demand the Thrift Plan assets, remonstrating with Equifax on the matter as late as October 1993. Having received Equifax's December 1993 confirmation that Mr. Mattei's Thrift Plan benefits had been distributed to Maria (Letter, Equifax Counsel to Estate's Counsel, 12/8/93, Appendix K hereto), in March 1994 the Estate's counsel wrote Maria Mattei's counsel requesting "that she immediately turn the assets she received from the Thrift Plan over to the Estate." (Letter, Estate's Counsel to Maria's Counsel, 3/21/94, Appendix L hereto). The stated basis for this demand was the Estate's claim that Mr. Mattei, Maria Mattei and the Mattei children met in March 1991 so that Mr. Mattei "could explain . . . that the Thrift Plan was to be the source of periodic payments under the Antenuptial Contract." (*Id.*)

The recollection of this meeting by the Mattei children (who are generally the beneficiaries of the Estate) is disputed by Maria Mattei and in any event is irrelevant. The Antenuptial Agreement did not provide for any periodic payments to be made from the Thrift Plan. (Appendix C). In fact, the Antenuptial Agreement unambiguously provides that the *Estate* shall pay the Stipend. (*Id.*) Nor did Maria Mattei consent during her marriage to Mr. Mattei to any arrangement whereby the Thrift Plan benefits would be paid to the Estate or used in any way by the Estate. As the Equifax benefits administrator pointed out in denying the Estate's claim to Mr. Mattei's Thrift Plan benefits, the Antenuptial Agreement "does not mention the Plan in any way, directly or indirectly, and the Contract does not indicate Maria Mattei's consent to the designation of another beneficiary." (Appendix E).

The Estate waited a few months more for Maria to comply with its demand to turn over the Thrift Plan benefits to the Estate. In December 1994, however, "the Estate ceased making weekly disbursements to Maria under the antenuptial agreement." (Petition at 6).

In 1995, Maria obtained her present legal counsel, who on September 15, 1995 wrote to counsel for the Estate (also changed) requesting that the weekly payments from the Estate to Maria under the Antenuptial Agreement be caught up and resumed. (Letter, Maria's Counsel to Estate's Counsel, 9/15/95, Appendix M hereto). Counsel for the Estate responded in a September 25, 1995 letter asserting that by receiving the Thrift Plan benefits, "Mrs. Mattei has been overpaid by hundreds of thousands of dollars," and describing the $300 per week payments Maria did receive until December 1994 as "resulting in a large overpayment against the promise of $300 per week total." (Letter, Estate's Counsel to Maria's Counsel, 9/25/95, Appendix N hereto). The March 1991 meeting and Mr. Mattei's alleged "intentions" for the Thrift Plan were revisited. The absence of any reference to these intentions in the Antenuptial Agreement was explained by an assertion that the "agreement was not well-prepared." (*Id.*) Any pursuit by Maria of resumption of the weekly payments under the Antenuptial Agreement would be met, the letter continued, "with resistance as far as such resistance can be carried through the legal system." (*Id.*)

On November 22, 1995, Maria Mattei filed the Complaint in the United States District Court for the Western District of Kentucky. (Appendix B). The United States Court of Appeals for the Sixth Circuit having reversed the District Court's dismissal of the Complaint, the Estate's resistance now reaches the docket of this Court.

REASONS FOR DENYING THE PETITION

A. This Is an Interlocutory Matter Better Considered by the Court When, and If, a Decision on the Merits Is Had Below.

The opinion of the United States Court of Appeals for the Sixth Circuit simply reinstates Maria Mattei's "ERISA claims and pendent state claims" in the district court. (Opinion, 126 F.3d at 810; Petition at 32a). No answer to

Maria's complaint has yet been filed, no discovery had, no facts of record adduced. While the above recitation suggests what the proof of facts may be, there is nothing "extraordinary" in this case that should induce the Court to depart from its usual course that "the writ [of certiorari] is not issued until final decree." *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U.S. 251, 258, 36 S. Ct. 269, 60 L. Ed. 629, 633 (1916). Any of the parties may raise "the same issues in a later petition, after final judgment has been rendered." *Virginia Military Institute* v. *United States*, 508 U.S. 946, 113 S. Ct. 2431, 124 L. Ed.2d 651 (1993).

B. The Sixth Circuit Merely Explained and Did Not Overrule *West* v. *Butler*, 621 F.2d 240 (6th Cir. 1980), and There Is No Conflict Among the Circuits on the Question Presented Sufficient to Require Resolution in this Court.

Petitioners' assertion that *West* "is implicitly overruled or extended beyond recognition in the instant case" (Petition at 5) is simply wrong. Petitioners very selectively cite from the Sixth Circuit's comprehensive discussion of *West* and its progeny (126 F.3d at 798-804; Petition at 7a - 19a) and ignore the vast substance of that discussion, which in and of itself provides sufficient basis for the Court to deny the Petition.

Petitioners ignore the full impact of the key phrase in *West* itself — "The legislative history [of 29 U.S.C. § 1140] reveals that the prohibitions were aimed *primarily* at preventing unscrupulous employers from discharging or harassing their employees in order to keep them from obtaining vested pension rights." 621 F.2d at 245 (emphasis added); cited, 126 F.3d at 798. The Sixth Circuit's statement of the *primary* purpose of § 510 in *West* closely resembles this Court's statement in *Ingersoll-Rand* v. *McClendon*, 498 U.S. 133, 143, 111 S. Ct. 478, 485, 112 L.Ed.2d 474 (1990) that a claim that an employer terminated or otherwise discriminated against an employee "to

circumvent the provision of promised benefits . . . is *prototypical* of the kind Congress intended to cover under § 510." (Emphasis added.) As should be obvious, the "primary" purpose of ERISA § 510 is not the sole or exclusive purpose. A "prototypical" § 510 claim is an original model or form for such a claim, but the word itself assumes the existence of variations from the "prototype."

As the Sixth Circuit explains, the facts of *West* "are far from 'prototypical,' " making it "a bit odd that *West* is the leading § 1140 case." 126 F.3d at 798; Petition at 7a. The *West* plaintiffs, trustees of a collectively-bargained pension fund, alleged that secondary boycotters harmed the fund, and thereby interfered with participants' attainment of pension benefits under § 510, by causing the sponsoring coal companies to curtail the coal production upon which contributions to the plan were based. Sorting through this Rube Goldberg-like theory of causation of harm to the *participants*, the Sixth Circuit focused on the key flaw — plaintiffs' attempt to use ERISA § 510 "to protect the financial security of pension funds." 621 F.2d at 246.

It is in this particular setting of fact and theory that the Sixth Circuit uttered the oft-repeated phrase: "we conclude that discrimination, to violate § 510, must affect the individual's employment relationship in some substantial way." *Id.* at 245-246. That is, actions that discriminate by changing or otherwise affecting the *plan* itself do not come within the scope of § 510.

The Sixth Circuit carefully examines all the cases cited by Petitioners (and some Petitioners did not cite) which repeat *West's* "employment relationship" phrase, concluding:

> [W]hen courts, quoting *West*, state that "discrimination, to violate § 510, must affect the individual's employment relationship in some significant way," they generally do so in order to make the point that, by contrast, § 510 offers no protection against an employer's actions affecting the scope and status of an ERISA plan itself.

126 F.3d at 800; Petition at 11a.

In the cases upon which Petitioners rely to show a conflict among federal circuits, that is precisely the way in which those courts citing *West* use the Sixth Circuit's treatment of § 510. *Haberern* v. *Kaupp Vascular Surgeons Ltd. Defined Benefit Pension Plan*, 24 F.3d 1491 (3d Cir. 1994), *cert. denied*, ___ U.S. ___, 115 S. Ct. 1099, 130 L.Ed.2d 1067 (1995) and *McGath* v. *Auto-Body North Shore, Inc.*, 7 F.3d 665 (7th Cir. 1993) are cases in which the discrimination complained of consisted of the employer's amendment of a pension plan so as to prevent the plaintiff's participation (*McGath*) or to reduce compensation upon which future benefit accruals were to be based (*Haberern*). In *Woolsey* v. *Marion Laboratories, Inc.*, 934 F.2d 1452 (10th Cir. 1991), the alleged "discrimination" was a profit sharing plan administrator's denial of a participant's request to receive one-half of his benefits in employer stock. In *Rogers* v. *Jefferson-Pilot Life Insurance Co.*, 883 F.2d 324 (4th Cir. 1989), which does not cite *West*, the fact focus is a group health policy administrator's denial of health benefits, and the court simply holds that such a plan benefit-related action should have been grounded in 29 U.S.C. § 1132(a)(1)(B) rather than 29 U.S.C. § 1140. Thus, the "conflict among the Third, Fourth, Seventh, and Tenth Circuits" (and not the Sixth?) posited by Petitioners (Petition at 6) simply collapses into a collection of divergent dicta.[2]

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[2] Not presuming to speak for the other courts, the Sixth Circuit adds:

> *Possibly* the courts intended this language [that the protections of ERISA § 510 are limited to employment situations that affect ERISA rights] to be categorical, rather than simply, as we have suggested above, part of an argument that actions taken with respect to the plan itself are not protected by § 510. If they did, we disagree. The conclusion that § 1140 covers only conduct affecting "the employment relationship" is insupportable. [Emphasis added.]

126 F.3d at 801; Petition at 13a-14a.

What surely defeats Petitioners' claim of a conflict is that the cases in the other circuits are distinguishable on their facts from this case as it now stands, nearly all of them involving allegations that an employer's actions either in amending an ERISA plan or in denying certain plan benefits violated § 510. The facts, as noted, have yet to be developed in this case. Petitioners have not cited a decision of another circuit with even remotely analogous facts. Plainly, this case is more logically to be regarded as among the first of its kind, making equally clear that the issues arising from its facts should undergo "further study" in lower courts "before it is addressed by this Court." *McCray* v. *New York*, 461 U.S. 961, 963, 103 S. Ct. 2438, 2439, 77 L.Ed.2d 1322 (1983).

C. The Sixth Circuit's Ruling Does Not Expand ERISA Pre-Emption and Does Not Federalize Trust and Estate Law Beyond What 29 U.S.C. § 1055 (ERISA § 205) Clearly Requires for Protection of Surviving Spouses Such as Maria Mattei.

The Sixth Circuit correctly assesses that this decision does not "exponentially expand federal jurisdiction over state law claims" (Petition at 10):

> The dissent complains that our interpretation of § 1140 federalizes family law. I do not believe that we do any more than ERISA has already accomplished by means of its broad preemption provision, 29 U.S.C. § 1144(a) . . . . [V]ery recently, the Supreme Court held, in *Boggs* v. *Boggs*, ___ U.S. ___, 117 S. Ct. 1754, 138 L.Ed.2d 45 (1997), that community property laws — a keystone of family law in the states having such regimes — do not withstand ERISA preemption. The Court went so far as to say that "[t]his case involves a community property claim, but our ruling will affect as well the right to make claims or assert interests based on the law of any State, whether or not it recognizes community property." *Id.* at ___, 117 S. Ct. at

> 1760. By comparison, our holding adds little to the pre-existing breadth of ERISA preemption.

126 F.3d at 809, Petition at 30a-31a.

The Sixth Circuit holds that wherever one may finally locate "the intersection of ERISA pension law and state family and probate law" (Petition at 9), "what the estate is not free to do is to invoke self-help by interfering or retaliating against Maria for a valid exercise of her ERISA rights." 126 F.3d at 809; Petition at 31a. In this regard, any undue "expansion" of federal jurisdiction is logically checked by the necessity for Maria to show that the Estate's withholding of payments "has a logical linkage to her status as an ERISA beneficiary" in order to survive a summary judgment motion by defendants. 126 F.3d at 809; Petition at 30a.

Petitioners' reliance on *Boggs* (Petition at 8-10) is astonishing. Petitioners' assertion that ERISA § 510 protection must stop at the edge of a state-law antenuptial agreement, no matter how the agreement affects pension rights, is tantamount to a request for this Court to overrule *Boggs*.

Petitioners' argument is clearly antithetical to *Boggs*. Petitioners' argument would allow the Estate to usurp the rights of the ERISA beneficiary, Maria Mattei, in the Thrift Plan benefits by cutting off the Stipend under the Antenuptial Agreement to enforce the Estate's unilateral determination, unsupported by any ERISA or state-law document, that the Thrift Plan benefits were "intended" to be used to fund the Stipend. Thus, Petitioners' argument, "if allowed to succeed, would depart from [the ERISA] framework [of participant and beneficiary], upsetting the delicate balance central to ERISA." ___ U.S. at ___, 117 S. Ct. at 1767, cited in Petition at 9.

Petitioners emphasize that Maria "already had received the entire death benefit" (Petition at 3) under the Thrift

Plan, in essence repeating the argument of the testator's children in *Boggs* that "Sandra's community property obligations, after she receives the survivor annuity payments, 'fai[l] to implicate the regulatory concerns of ERISA.' " ___ U.S. at ___, 117 S. Ct. at 1761 (citation omitted). To that, this Court said: "We disagree." *Id.* With equal force should the same be said to Petitioners' outright invention of an Antenuptial Agreement "obligation" for Maria to fund the Stipend with her Thrift Plan benefits (see Appendix C), and to Petitioners' argument that the Estate's self-help, because it occurred after Maria received the Thrift Plan benefits, "fails to implicate the regulatory concerns of ERISA." *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1, 15, 107 S. Ct. 2211, 2219, 96 L.Ed.2d 1 (1987).

Finally, Petitioners' argument that *Boggs*, combined with *Mattei*, would allow a claimant to recover double damages (Petition at 9-10) merits a summary rejection. Petitioners fail to consider this Court's decision in *Massachusetts Mutual Life Ins. Co.* v. *Russell*, 473 U.S. 134, 105 S. Ct. 3085, 87 L.Ed.2d 96 (1985) that in claims to enforce ERISA benefit rights, extracontractual compensatory or punitive damages are not recoverable.

Beyond obliteration of *Boggs*, Petitioners' attempt to draw an inviolable line around state family law would, if successful, overrule the considerable body of unanimous federal jurisprudence regarding the "intersection" of the ERISA § 205 surviving spouse protections (29 U.S.C. § 1055) and state-law antenuptial agreements. Petitioners assert that state law should control the question whether the Antenuptial Agreement would permit the Estate to use Maria Mattei's Thrift Plan death benefits to fund the Stipend to Maria. In essence, this is the same as saying state law should determine whether under the Antenuptial Agreement Maria waived, in advance of marriage, her spousal rights as a beneficiary of the Thrift Plan.

Such an assertion directly contradicts the entire body of federal law on the question. A waiver of spouse survivor benefits in an employee pension benefit plan must meet the requirements of § 205 of ERISA, 29 U.S.C. § 1055, and cannot be accomplished prior to marriage in a state law antenuptial agreement. *See, e.g., Pedro Enterprises, Inc.* v. *Perdue*, 998 F.2d 491, 494 (7th Cir. 1993); *Hurwitz* v. *Sher*, 982 F.2d 778, 781 (2d Cir. 1992); *cert. denied*, 508 U.S. 912, 113 S. Ct. 2345, 124 L.Ed2d 255 (1993); *Callahan* v. *Hutsell, Callahan & Buchino, P.S.C. Revised Profit Sharing Plan*, 813 F. Supp. 541 (W.D. Ky. 1992), *vacated on other grounds*, 14 F.3d 600 (6th Cir. 1993); *Nellis* v. *Boeing Co.*, 15 Employee Benefits Cases (EBC) 1651 (D. Kan. 1992); *Zinn* v. *Donaldson Co., Inc.*, 799 F. Supp. 69 (D. Minn. 1992).

Indeed, the ERISA § 205 surviving spouse benefit waiver standards, which are exacting, *see, e.g., Lasche* v. *George W. Lasche Basic Profit Sharing Plan*, 111 F.2d 863 (11th Cir. 1997), would apply equally to any waiver of Maria Mattei's Thrift Plan spouse survivor benefits purported to have been made during marriage. *McMillan* v. *Parrott*, 913 F.2d 310 (6th Cir. 1990). Even beyond state-law contracts relative to marriage, state statutes or regulations affecting rights of surviving spouses in employee benefit plans must give way to ERISA's requirements. *See, e.g., Metropolitan Life Insurance Co.* v. *Pressley*, 82 F.3d 126 (6th Cir. 1996) (ERISA preempts Michigan statute that would require judgments of divorce or separate maintenance to determine rights of wife in life insurance proceeds of husband's policies or contracts in which wife was designated beneficiary); *Moore* v. *Philip Morris Companies, Inc.*, 8 F.3d 335, 341-42 (6th Cir. 1993) (Kentucky adultery forfeiture statute preempted by ERISA as affecting spouse survivor rights).

In sum, the federal courts have already plainly and overwhelmingly rejected Petitioners' view that state law,

and a state court action, provides Maria Mattei's sole remedy for the Estate's self-help against her pension-related Antenuptial Agreement rights. Preemption of these remedies by ERISA is the necessary conclusion of the same conflict analysis this Court performed in *Boggs* as to a Louisiana body of law "implement[ing] policies and values lying within the traditional domain of the States":

> We can begin, and in this case end, the analysis [of the question of ERISA preemption] by simply asking if state law conflicts with the provisions of ERISA or operates to frustrate its objects. We hold that there is a conflict, which suffices to resolve the case.

___ U.S. at ___, 117 S. Ct. at 1760-61.

The preemptive effect of ERISA's surviving spouse protections with regard to antenuptial agreements such as Maria's is thus well within conventional ERISA jurisprudence. No new ground is being plowed. If anything is out of the ordinary, it is the unusual form of self-help practiced by the Estate. The Sixth Circuit has carefully and correctly determined that the Estate's alleged unilateral action to retaliate against Maria for receiving her Thrift Plan surviving spouse benefits, and to interfere with her enjoyment of these ERISA benefits, is actionable under § 510 of ERISA.

CONCLUSION

For the foregoing reasons, the Petition of the Estate for a writ of certiorari should be denied.

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April 14, 1998

CERTIFICATE OF SERVICE

I, Robert W. Griffith, a member of the bar of this Court, hereby certify that on this 14th day of April, 1998, three (3) copies of the Respondent's Brief in Opposition to Petition for Writ of Certiorari were served by mail, first-class postage prepaid, upon:

Walter L. Sales, Esq.
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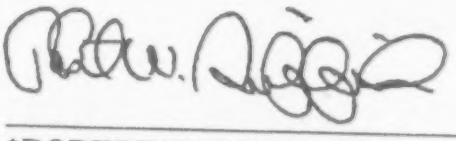
I further certify that all parties required to be served have been served.



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